IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
JEFFERSON CITY, CENTRAL DIVISION

SEMCO, LLC, a Missouri Limited Liability Company, Plaintiff, v. TRANE U.S., INC., a Delaware corporation, Defendant.	)	JURY TRIAL DEMANDED Case No.: __________________

COMPLAINT

COMES NOW the Plaintiff SEMCO, LLC (hereinafter "SEMCO") by and through its undersigned attorneys, and for its cause of action against Defendant Trane U.S., Inc. (hereinafter "Trane") herein states as follows:

THE PARTIES

1. Plaintiff SEMCO is a Missouri Limited Liability Company having its principal place of business located at 1800 East Pointe Drive, Columbia, Missouri 65201-3508.

2. Trane is, upon information and belief, a corporation organized and existing under the laws of Delaware, with principal places of business located in North Carolina and Wisconsin. Trane has done business under different trade names including "Trane Commercial Systems", "Trane Creative Solutions" and "Trane West Michigan." Trane manufactures, sells and markets heating and air ventilation equipment and has multiple business locations in, and transacts

business in, Missouri including the Western District of Missouri, and has delivered and sold numerous products into Missouri and the Western District of Missouri.

JURISDICTION AND VENUE

3. Because this action arises under the Patent Laws of the United States (Title 35 U.S.C.), this Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1338.

4. Jurisdiction is further proper under Missouri law and under the United States Constitution.

5. Venue in this Court is proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1400.

ALLEGATIONS OF INFRINGEMENT

6. On March 13, 2001, United States Letters Patent No. 6,199,388, invented by John C. Fischer, Jr. (the "Fischer '388 Patent"), was duly and legally issued to Plaintiff SEMCO for an invention in "System And Method For Controlling Temperature And Humidity" and, since that date SEMCO has been, and still is, the owner of said Fischer '388 Patent. All maintenance fees for the Fischer '388 Patent have been paid and the Fischer '388 Patent remains in full force and effect. (A true and correct copy of said Fischer '388 Patent is attached hereto as Exhibit 1, and incorporated by reference herein).

7. Trane has infringed the Fischer '388 Patent by making, using, selling, offering for sale, and/or, importing into the United States, systems and methods embodying one or more of the claims of the Fischer '388 Patent, and/or by inducing others to so infringe, and/or by contributing to such infringement by others, all in violation of 35 U.S.C. § 271.

8. SEMCO has been, and will continue to be, irreparably harmed by the acts of Trane as complained of herein; wherefore SEMCO is without adequate remedy at law.

9. Unless enjoined by this Court, Trane will continue with the aforesaid infringement of the Fischer '388 Patent.

KNOWLEDGE AND NOTICE OF THE '388 PATENT, AND WILLFUL INFRINGEMENT

10. Trane's infringement of the Fischer '388 Patent has been committed knowingly and willfully.

11. Trane had notice of SEMCO's rights in the Fischer '388 Patent as early as the year 2005 when a dispute arose between SEMCO and Trane concerning the Fischer '388 Patent. Exemplary of that dispute and of Trane's knowledge of the Fischer '388 Patent is the email of April 22, 2015, from Art Hallstrom of Trane to Doug Haas and John Fischer, both of SEMCO, attached as Exhibit 2, which concerns a project in Houston, Texas. In the Exhibit 2 email Mr. Hallstrom states that Trane's "Management decided today to have Semco build both units to avoid patent infringement." That reference to the phrase "patent infringement" refers to the Fischer '388 Patent. Also illustrative of Trane having knowledge of the Fischer '388 Patent in the year 2005 are the emails attached hereto as Exhibit 3. In the email of 04/25/2005 at 2:21 PM from Art Hallstrom of Trane to Etienne Prehoda of Semco, included in Exhibit 3, Mr. Hallstrom of Trane states as to the Houston project that "our attorney's said the unit needs to be Semco unit do (*sic*, "due") to the patent." The words "the patent" in that email again refers to the Fischer '388 Patent. The Exhibits 2 and 3 e-mails demonstrate Trane's knowledge and actual notice of the Fischer '388 Patent and that Trane knew that it would have infringed the Fischer '388 Patent had it proceeded to sell the system that it had initially proposed to sell.

12. Further to Trane's knowledge and notice of SEMCO's rights in the Fischer '388 Patent attached as Exhibit 4 is a letter dated February 18, 2010, from Daniel Crowe, counsel for SEMCO, to Trane and received by Trane in February 2010. A true and accurate copy of the

Fischer '388 Patent was enclosed with the Exhibit 4 letter. Despite having actual notice of the Fischer '388 Patent, Trane thereafter infringed the Fischer '388 Patent.

13. Trane had stated in certain correspondence that the Fischer '388 Patent was invalid in view of United States Patent No. 4,903,503 with named inventor Gershon Meckler (hereafter "Meckler '503 Patent"). An October 25, 2012, letter from SEMCO's attorney, Scott Smith, to Trane's attorney which was received by Trane's attorney (attached hereto as Exhibit 5) that explained why the Fischer '388 Patent was not invalidated by the Meckler '503 Patent. Exhibit 5 explained that the Meckler '503 Patent was duplicative of United States Patent No. 4,723,417, which patent also had named inventor Gershon Meckler (hereafter "'417 Meckler Patent"), and that the '417 Meckler Patent was cited by the Patent Office during the prosecution of the application that lead to the Patent Office granting the Fischer '388 Patent. The Exhibit 5 further stated that the Meckler '503 Patent was not materially different from the prior art over which the claims of the Fischer '388 Patent were allowed by the Patent Office.

14. This Court issued a Consent Judgment on February 21, 2012, by the Honorable Fernando J. Gaitan, Jr., in the case of *SEMCO LLC v. Huntair, Inc. and Temtrol, Inc.*, Case No. 11-cv-4026 FJG, which found that the Fischer '388 Patent was valid and had been infringed by certain systems and methods of the defendants in that case, with such infringing systems being exemplified by the Exhibits A, B-1, B-2, B-3, C-1 and C-2, which were attached to the said Consent Judgment. The said Consent Judgment without the aforementioned Exhibits A, B-1, B-2, B-3, C-1 and C-2 is attached hereto as Exhibit 6.

15. The Exhibit 5 October 25, 2012, letter to Trane's attorney also enclosed the said Exhibit 6 Consent Judgment and its attached Exhibits A, B-1, B-2, B-3, C-1, and C-2. The Exhibit 5 letter stated as follows:

> The Consent Judgment issued on February 21, 2012, by the U.S. District Court for the Western District of Missouri ……. in *SEMCO, LLC v. Huntair, Inc. and Temtrol, Inc.* (copy enclosed) held that Huntair and Temtrol had infringed the Fischer Patent. Additionally, through the Consent Judgment the Court issued an injunction enjoining Huntair and Temtrol from future infringement of the Fischer Patent ….. As a side note, during the above-mentioned Huntair litigation, Huntair filed the Meckler '503 Patent as an exhibit and contended that it showed and described the components depicted in Figure 3A of the Fischer Patent, and that it invalidated the Fischer Patent ….. Despite such contentions, and with knowledge of such contentions, the U.S. District Court issued its Consent Judgment enforcing the Fischer Patent, with the consent of Huntair and Temtrol.

16. The representations in that Exhibit 5 letter to Trane's attorney were accurate in that the Defendant Huntair had alleged (*see* e.g., Docket Entry 44 from Case No. 11-cv-4026 FJG), that the '388 Fischer was invalid in view of the Meckler '503 Patent.

17. Upon information and belief, an infringing system and method that Trane has made, used, offered for sale, sold and/or imported into the United States for Zeeland Public Schools is shown by documents attached hereto as Exhibit 7. The system illustrated in Exhibit 7 is virtually the same as, and employs the same steps of operation as, the systems and the methods of operation, illustrated in Exhibits A, B-1, B-2, B-3, C-1 and C-2, of the Exhibit 6 Consent Judgment.

18. Additionally, upon information and belief, attached hereto is Exhibit 8 which are documents distributed by Trane in 2016, offering for sale with regard to a project for Sioux Falls City Hall, a system as illustrated in the drawings in Exhibit 8 and discussed in specifications and operating parameters of Exhibit 8. The system illustrated in Exhibit 8 is likewise virtually the same as, and employs the same steps of operation as, the systems and methods of operation in the said Exhibits A, B-1, B-2, B-3, C-1 and C-2, of the Exhibit 6 Consent Judgment. Upon

information and belief the Exhibit 8 documents were distributed by Trane's headquarters, and the materials were prepared for Trane's computer systems for offering for sale its systems on a general basis.

19. Trane's system and method illustrated in each of Exhibits 7 and 8 is a system and method covered by one or more Claims of the Fischer '388 Patent. For example, the Exhibit 7 and Exhibit 8 systems have all elements of Claim 1 of the Fischer '388 Patent that covers a system for controlling the temperature and humidity level of a controlled space, which comprises:

a) an air supplier adapted to supply air to the controlled space, creating a supply air steam;

b) an air exhauster adapted to exhaust air out of the controlled space, creating an exhaust air stream adjacent to the supply air stream;

c) a partition disposed between the supply and exhaust air streams that separates the supply and exhaust air streams;

d) a total energy recovery device in contact with the supply air stream and exhaust air stream that exchanges heat and moisture between the supply and exhaust air streams;

e) a dehumidification wheel positioned to rotate through the supply air stream and the exhaust air stream that exchanges heat and moisture between the supply and exhaust air streams; and

f) a cooler disposed in the supply air stream between the total energy recovery device and the dehumidification wheel, the cooler adapted to cool and dehumidify the supply air stream.

20. A January 30, 2014, letter from SEMCO's attorney, Scott Smith, delivered to Trane's attorney (a copy of which is attached hereto as Exhibit 9). The Exhibit 9 letter referred to the said Exhibit 5 Mr. Smith's October 25, 2012 letter, and noted that Trane's attorney's had never responded to Exhibit 5.

21. SEMCO did not become aware of the infringing nature of Trane's system and method illustrated in Exhibits 7 and 8 until after the Exhibit 9 letter was sent.

22. SEMCO has been, and will continue to be, irreparably harmed by the acts of Trane as complained of herein; wherefore SEMCO is without adequate remedy at law.

WHEREFORE, Plaintiff SEMCO prays:

A. That Trane, its agents, servants and all those acting in concert and/or privity with Trane, be preliminarily and permanently enjoined from infringing (i.e. importing, making, using, selling, and/or offering to sell) any products or services covered by any or all of claims of the said Fischer '388 Patent in accordance with 35 U.S.C. § 283;

B. That Trane be held liable for all awards granted by this Court in favor of SEMCO;

C. That SEMCO be awarded damages for Trane's infringement of the Fischer '388 Patent, together with all interest thereon including prejudgment interest, and that said damages be trebled in accordance with 35 U.S.C. § 284;

D. Further, that this case be declared an exceptional case under 35 U.S.C. § 285, and that SEMCO be awarded its reasonable attorney's fees.

E. That the costs of this action be assessed against Trane; and

F. That SEMCO be awarded all such other and further relief as the Court may deem appropriate under the circumstances.

SEMCO hereby demands trial by jury on all issues triable by jury.

POLSTER, LIEDER, WOODRUFF & LUCCHESI, LC

By: /s/McPherson D. Moore

McPherson D. Moore, # 26,056MO
William B. Cunningham, #20,998MO- of counsel
Douglas D. Churovich, #47,736MO- of counsel
12412 Powerscourt Drive, Suite 200
St. Louis, Missouri 63131-3615
PHONE: (314) 238-2400
FAX: (314) 238-2401
ATTORNEYS FOR PLAINTIFF